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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/823,345 | 04/12/2004 | Tom Bogeskov-Jensen | ACU-9210 | 4741 |

28584 7590 06/08/2006
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| EXAMINER |
| ENSEY, BRIAN |

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| ART UNIT | PAPER NUMBER |
| 2615 | |

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,345

Applicant(s)

BOGESKOV-JENSEN ET AL.

Examiner

Brian Ensey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braund U.S. Patent No. 6,373,942 in view of Moore U.S. Patent No. 4,901,355 in further view of Braund.

Regarding claim 1, Braund discloses a headset comprising: a support member including (Fig. 8, item 60) formed from a flexible material (See col. 10, lines 24 and 25) and including a curved slot (See fig. 3, item 74 and col. 7, lines 32-37) to be hung from the ear of the user and a speaker transducer (28) that outputs sound in response to a sound signal. Braund further teaches the speaker transducer is located inside the support member in a position which would occlude the ear of the user. Braund fails to teach the support member including no functional components for the operation of the headset; and a deformable clip connected to the transducer and configured to permit attachment of the transducer to the support member. However, Moore teaches that it is well known in the art for present headset and earphones to be limited to a single position; whereby existing headsets and earphones enclose the ear, are pressed adjacent to the ear, or, are positioned in the auditory canal (See Moore col. 1, lines 46-50). Further, Moore teaches a support member (38) including no functional components for the operation of the headset; a speaker transducer (14) that outputs sound in response to a sound signal and a deformable clip (41) connected to the transducer and configured to permit attachment of the

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transducer to the support member (See Fig. 2). Moore also teaches that in the event that the user of the device does not wear spectacles, the clamps permit attachment to other headgear for positioning the speaker transducer near the ear (See Moore col. 4, lines 27-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to locate the speaker (28) of Braund outside near the ear and clipped to the support member as taught by Moore for the purpose of providing the user with the ability to hear surrounding sounds thus enhancing the safety of the user (See Moore col. 1, lines 46-56).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Braund in view of Moore as applied to claim 1 above, and further in view of Lee U.S. Patent No. 6,038,329.

Regarding claim 2, the combination of Braund in view of Moore teaches a variety of clips (See Fig. 1, item 30) and Fig. 2, item 41) to support the speaker transducer on the support member (See Figs. 2 and 3, item 38). The combination of Braund in view of Moore fails to teach said clip is formed with a U-shaped section located between a pair of opposed legs and wherein the support member is clamped between said opposed legs. However, Lee teaches a U-shaped clip wherein the support member is attached to the clip to hold the transducer on the ear (See Lee Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that any clip can be used to secure the speaker transducer to a support member and to replace the clip of the combination of Braund in view of Moore with the clip of Lee as an attachment and support device.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Braund in view of Moore as applied to claim 1 above, and further in view of Clegg U.S. Patent No. 6,490,362.

Regarding claim 6, the combination of Braund in view of Moore discloses a headset as claimed. The combination of Braund in view of Moore discloses a microphone transducer (26a) that outputs a speech signal in response to sound, said microphone transducer being connected to the support member with a pin (114) and clip (112) configuration (See Braund Fig. 8). Further, the use of microphones in headsets is well known in the art and Clegg teaches a microphone transducer (20) mounted in a boom that clips to support member (242) and a speaker transducer (216) attached to a support member with clip member 248 engaged with pin (236) (See Fig. 9 and col. 9, line 58 to col. 10, line 32). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a clip as an alternative means to attach the microphone transducer to the support member of the combination of Braund in view of Moore for two way communication.

Response to Arguments

Applicant's arguments filed 4/17/06 have been fully considered but they are not persuasive.

With regards to the applicant's argument on page 3, lines 10-12 that *While the Braund device is relatively lightweight, it still requires relatively complex manufacturing steps to place the electronics, including a circuit board and receiver transducer between the laminated layers,* the examiner disagrees.

While some embodiments of Braund are complex, the embodiment of Figure 8 is merely a speaker device contained within the flexible layers (60, 60A, 64). This device is a relatively simple device and contains no circuit board or complex electronics. Braund clearly illustrates that a flexible planar support member with a curved slot to allow the support to be hung from the ear is well known in the art.

With regards to the applicant's argument on page 3, line 23 that there is no motivation to combine the Braund and Moore reference, the Examiner disagrees.

Moore clearly teaches that placing a speaker in a fixed position adjacent the ear produces a safety hazard i.e., "the wearer is hindered in his ability to hear surrounding sounds such as instructions, warnings, automobiles, sirens, conversations etc." (See Moore col. 1, lines 46-56). Therefore, movement of the speaker of the Braund device provides an enhanced, safer listening environment.

With regards to the applicant's argument on page 3, lines 26-30 and page 4, lines 1 and 2 that *one skilled in the art would have to rip all the electronics out of the Braund device...the electronics would have to be hung from the Braund support member via clip 42... and ...would result in the headphone would no longer being aligned with the ear of the user...*, the Examiner disagrees.

As stated above, the embodiment of figure 8 of Braund merely encloses a speaker in the flexible support member of Braund. Further, Moore clearly teaches utilizing a deformable clip (41) to permit attachment of a transducer to a support member (spectacles, hat, headband, etc.).

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Further, the applicant does not specifically illustrate or claim that the embodiment of figure 14 places the speaker in direct alignment with the ear, only that the speaker transducer is attached to the support member utilizing a deformable clip.

With regard to the applicant's argument on page 4, lines 6 and 7 that *Braund is directed to attaching the electronics to a piece of clothing and is not directed to connecting the device to the ear*, the Examiner disagrees.

The device of Braund is clearly intended to be hung from the ear of the user as clearly illustrated in figures 3, 4, 10, 12 and 13 and as clearly stated in the abstract.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group **Art Unit 2615**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Va. 22313-1450

Or faxed to:

(571) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to:

Customer Service Window
Randolph Building
401 Dulany Street
Arlington, VA 22314

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SINH TRAN
SUPERVISORY PATENT EXAMINER

BKE

June 2, 2006